

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON**

MARISA SALZER,

Plaintiff,

v.

CITY OF MONTESANO,

Defendant.

Case No.: 3:21-cv-5113

**COMPLAINT**

Plaintiff, MARISA SALZER, by and through her undersigned counsel, hereby files this Complaint against Defendant, CITY OF MONTESANO, alleges as follows:

**PRELIMINARY STATEMENT**

1. Plaintiff, MARISA SALZER, is profoundly deaf as a congenital condition and requires communication accessibility in American Sign Language (“ASL”), which is her expressed, preferred, and most effective means of communication in public and work situations requiring accommodations. Defendant discriminated against Plaintiff by failing to provide her with a sign language interpreter nor accurate closed captioning during the bi-weekly City Council meetings which is otherwise open to the public and live streamed on media platforms for public

1 access.

2 2. Defendant' discriminatory acts, as alleged herein, represent a continuing violation  
3 illustrated by previous instances of similar discriminatory conduct, which have placed Defendant  
4 on notice of their obligation to accommodate deaf individuals. Plaintiff, who had served as a  
5 Council Member of the City of Montesano in 2012 through 2014, had made formal requests to the  
6 then-mayor, Ken Estes, and the City Administrator, Kristi Powell, to provide a sign language  
7 interpreter for the City Council meetings and executive sessions. Plaintiff repeatedly stated the  
8 importance of sign language interpreters on the record during two City Council meetings in  
9 January 2014. Defendant's repeated failure to provide qualified interpreters compelled Plaintiff to  
10 file a complaint with the Human Rights Commission on July 8, 2014, and the then-Mayor Estes  
11 published a public apology letter on in July 2014.

13 3. The discriminatory acts described in allegations herein show that Defendant  
14 continues to deprive Deaf and hard of hearing people of their fundamental civil and political rights.  
15 Despite Plaintiff's repeated requests for an interpreter, Defendant was deliberately indifferent to  
16 Plaintiff's deprivation of rights. Defendant's denial of effective communication prevented Plaintiff  
17 from exercising her fundamental right to participate in the democratic process and public decision  
18 making. Such discriminatory treatment caused Plaintiff emotional distress, frustration, and loss of  
19 dignity.  
20

21 4. Plaintiff brings this lawsuit to seek injunctive and declaratory relief; compensatory  
22 and punitive damages; and attorneys' fees and costs to redress Defendant's unlawful discrimination  
23 on the basis of disability in violation of Title II of the Americans with Disabilities Act ("ADA"),  
24 42 U.S.C. § 12131 et seq.; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; the  
25 Washington Law Against Discrimination ("WLAD"), Rev. Code Wash. (ARCW) § 49.60; and  
26

1 other state and common law causes of action.

2 **THE PARTIES**

3 5. Plaintiff MARISA SALZER is an individual residing at 1310 W. Whisperwood Ln.  
4 Montesano WA 98563. Ms. Salzer is Deaf, and is substantially limited in the major life activities  
5 of hearing and speaking within the meaning of federal and state anti-discrimination laws. Plaintiff  
6 requires the use of reasonable accommodations including closed captioning and American Sign  
7 Language Interpreters to communicate in public and work situations.  
8

9 6. Defendant CITY OF MONTESANO is a municipality within the State of  
10 Washington, and has its primary place of operation at 112 N. Main Street, Montesano WA 98563.  
11

12 **JURISDICTION & VENUE**

13 7. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343  
14 over Plaintiff's claims arising under federal law, and supplemental jurisdiction pursuant to 28  
15 U.S.C. § 1367 over Plaintiff's claims arising under state law.

16 8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because the  
17 Plaintiff and Defendant reside within the jurisdiction of this district, and a substantial part of the  
18 events that give rise to the claims occurred in this district.

19 **STATEMENT OF FACTS**

20 9. Plaintiff is Deaf. Plaintiff requires the use of reasonable accommodations including  
21 closed captioning and American Sign Language Interpreters to communicate in public and work  
22 situations.  
23

24 10. Plaintiff is a resident of the City of Montesano.

25 11. Plaintiff is a former City Council member and is currently an engaged citizen who  
26 desires to participate in the Council meetings as a member of the general public.

1           12.     The City is led by a Mayor and a City Council of 7 elected members. The City  
2 Council convenes in meeting twice a month. These meetings are accessible to the general public.

3           13.     From on or around March 16, 2020, due to the COVID-19 Pandemic, access to the  
4 City Hall of Montesano was limited or restricted.

5           14.     Since March 2020 to date, the City Council meetings and other public hearings  
6 were live-streamed and/or video-recorded and uploaded online on the City of Montesano's  
7 Facebook page.

8           15.     The videos of City Council meetings and other public hearings did not include  
9 closed-captioning nor an ASL interpreter. No transcripts were made available.

10           16.     Plaintiff wrote comments on Facebook requesting that the City provide accurate  
11 closed captioning for the multiple videos that are uploaded, but those comments were left without  
12 explanation nor a response.

13           17.     On August 24, 2020, Plaintiff wrote an email to the Mayor of the City, Vini Samuel,  
14 requesting that all City Council meetings be uploaded with accurate closed captioning. Plaintiff  
15 also included third party resources regarding captioning requirements to inform the Mayor's office.  
16 Plaintiff also informed in her email that the City has a legal duty to provide captioning for any and  
17 all videos released by the agency, with or without the request.

18           18.     On August 26, 2020, the Mayor responded to Plaintiff's email, informing Plaintiff  
19 that she may choose to attend the meeting in-person and use an equipment that would presumably  
20 provide some form of service to "address hearing impairment." The in-person attendance was  
21 suggested despite the fact that, as of August 25, 2020 -- according to official data provided by  
22 Washington State -- there had been total of 72,631 COVID-19 cases in Washington state-wide,  
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1 and the number of new cases were rapidly rising.<sup>1</sup> By the governor's proclamation, a gathering of  
2 over 10 people was restricted.

3 19. The Mayor also assured in her August 26<sup>th</sup> email that she would work on providing  
4 closed captioning for the videos streamed and uploaded on Facebook. To date, the videos of City  
5 Council meetings are streamed and uploaded on Facebook without captioning with the exception  
6 of no more than two videos, despite numerous advance notice and request for accommodations  
7 formally sent ahead of time by Plaintiff. In her request, Plaintiff noted that there were particular  
8 matters in the meetings that relate to her own community and annexation of her neighborhood, yet,  
9 even with this knowledge, the City failed to heed her interests.  
10

11 20. From November 23, 2020 to December 11, 2020, the City Hall of Montesano's  
12 access was limited to staff members due to a surge in COVID-19 cases. As such, members of the  
13 general public rely upon videos to virtually attend the City Council meetings.

14 21. Upon information and belief, at least one other member of the City has requested  
15 captioning for the streamed and recorded videos uploaded on Facebook.  
16

17 22. On January 12, 2021, Plaintiff joined the "live" City Council meeting virtually via  
18 City of Montesano's Facebook page.

19 23. Throughout the January 12, 2021 meeting, no captions were provided for the live  
20 streamed video.

21 24. Using the Facebook comment function, Plaintiff requested that captions be enabled.

22 25. An individual (elected councilman) managing the live stream video for the city  
23 named Dan Wood responded to Plaintiff's comment, mistakenly informing Plaintiff that the  
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26 <sup>1</sup> COVID-19 Data Dashboard, Washington State Department of Health,  
<https://www.doh.wa.gov/Emergencies/COVID19/DataDashboard>  
COMPLAINT - 5

1 captions are on. Sometime later, Dan Wood informed that captions are not on, and that technical  
2 work was underway.

3 26. The meeting proceeded until the end without any captioning despite multiple  
4 requests made by Plaintiff.

5 27. At the agenda for council meetings, the City represents that “seating priority in  
6 Council chambers is made available to persons requiring ADA/CFR accommodations” upon 72  
7 hours advance notice and request for accommodations, which applies only to people with physical  
8 disabilities (such as wheelchairs), but not sensorial disabilities (such as hearing).  
9

10 28. However, to date, the City has taken not resolved issues and failed to provide  
11 accommodations requested by Plaintiffs and other members of the public.

12 29. Without closed captioning, Plaintiff is unable to understand the discussions in the  
13 City Council meeting, exacerbated by the fact that Council Members’ faces and lips are covered  
14 by masks.

15 30. Defendant’s actions resulted in Plaintiff being irretrievably denied the complete  
16 understanding of the City Council Meetings, and prevented Plaintiff from exercising her  
17 fundamental right to participate in the democratic process and public decision making.  
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19 31. Defendant’s willful, knowing and repeated acts of intentional discrimination  
20 against Plaintiff evinces a pattern and practice of discrimination that caused Plaintiff to suffer  
21 emotional pain and anguish.

22 32. Defendant’s policy – whether formal or informal – of not arranging an accurate  
23 closed captioning results in a failure of their legal duty to make timely, reasonable  
24 accommodations.  
25

26 33. Defendant’s discriminatory treatment caused Plaintiff emotional distress,

1 frustration, and loss of dignity.

2 **CLAIM 1: VIOLATIONS OF TITLE II OF THE AMERICANS WITH**  
3 **DISABILITIES ACT AGAINST CITY OF MONTESANO**

4 34. Plaintiff repeats and realleges all preceding paragraphs in support of this claim.

5 35. At all times relevant to this action, Title II of the ADA, 42 U.S.C. § 12131 et seq.,  
6 has been in full force and effect and has applied to Defendant's conduct.

7 36. At all times relevant to this action, the United States Department of Justice  
8 regulations implementing Title II of the ADA, 28 C.F.R. Part 35, have been in full force and effect  
9 and have applied to the Defendant's conduct.

10 37. At all times relevant to this action, Plaintiff has been substantially limited in the  
11 major life activities of hearing and speaking, and has been an individual with a disability within  
12 the meaning of the ADA.

13 38. Defendant is a public entity as defined under Title II of the ADA, 42 U.S.C. §  
14 12131(1).

15 39. Title II of the ADA provides that "no qualified individual with a disability shall, by  
16 reason of such disability, be excluded from participation in or be denied the benefits of the services,  
17 programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42  
18 U.S.C. § 12132.

19 40. Federal Regulations implementing Title II of the ADA state that a public entity may  
20 not "(i) deny a qualified individual with a disability the opportunity to participate in or benefit from  
21 the aid, benefit, or service; (ii) afford a qualified individual with a disability an opportunity to  
22 participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; [or]  
23 (iii) provide a qualified individual with a disability with an aid, benefit, or service that is not as  
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1 effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach  
2 the same level of achievement as that provided to others." 28 C.F.R. § 35.130(b)(1).

3 41. Federal Regulations implementing Title II of the ADA state that a public entity  
4 "shall take appropriate steps to ensure that communications with applicants, participants, members  
5 of the public, and companions with disabilities are as effective as communications with others."  
6 28 C.F.R. § 35.160(a)(1).

7 42. Federal Regulations implementing Title II of the ADA state that "[a] public entity  
8 shall furnish appropriate auxiliary aids and services where necessary," and "shall give primary  
9 consideration to the requests of individuals with disabilities." 28 C.F.R. § 35.160(b).

10 43. Defendant discriminated against Plaintiff on the basis of her disability by excluding  
11 her from participation in and denying her the benefits of their services, and by subjecting her to  
12 discrimination, in violation of the ADA.

13 44. Defendant further discriminated against Plaintiff by failing to ensure effective  
14 communication through the provision of closed-captioning services.

15 45. As set forth above, absent injunctive relief there is a clear risk that Defendant's  
16 actions will recur with Plaintiff and/or additional deaf persons.

17 46. Plaintiff is therefore entitled to compensatory damages for the injuries and loss  
18 sustained as a result of Defendant's discriminatory conduct as hereinbefore alleged, as well as an  
19 award of attorney's fees, costs, and disbursements, pursuant to the ADA, 42 U.S.C. § 12133.

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23 **CLAIM 2: VIOLATIONS OF SECTION 504 OF THE REHABILITATION ACT**  
24 **AGAINST CITY OF MONTESANO**

25 47. Plaintiff repeats and realleges all preceding paragraphs in support of this claim.

26 48. At all times relevant to this action, Section 504 of the Rehabilitation Act, 29 U.S.C.



§ 794, has been in full force and effect and has applied to the Defendant's conduct.

49. At all times relevant to this action, Plaintiff has had a substantial limitation to the major life activities of hearing, and has been an individual with a disability within the meaning of the Rehabilitation Act.

50. At all times relevant to this action, Defendant and the City Council meetings have been programs or activities receiving federal financial assistance, and are therefore subject to the Rehabilitation Act.

51. Pursuant to Section 504 of the Rehabilitation Act, "[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794.

52. Defendant subjected Plaintiff to discrimination on the basis of her disability, in violation of 29 U.S.C. § 794.

53. As set forth above, absent injunctive relief there is a clear risk that Defendant's actions will recur with Plaintiff and/or additional deaf persons.

54. Plaintiff is therefore entitled to seek and recover compensatory damages for the injuries and loss she sustained as a result of Defendant's discriminatory conduct and deliberate indifference as hereinbefore alleged, pursuant to 29 U.S.C. § 794(a).

55. Plaintiff is further entitled to an award of attorney's fees, costs, and disbursements pursuant to the Rehabilitation Act, 29 U.S.C. § 794(a) and/or common law.

**CLAIM 3: VIOLATIONS OF THE WASHINGTON LAW AGAINST  
DISCRIMINATION AGAINST DEFENDANT THE CITY OF MONTESANO**

56. Plaintiff repeats and realleges all preceding paragraphs in support of this claim.

1           57. At all times relevant to this action, the Washington Law Against Discrimination  
2 (WLAD), Rev. Code Wash. (ARCW) § 49.60 et seq., has been in full force and effect and has  
3 applied to the Defendant's conduct.

4           58. At all times relevant to this action, Plaintiff has been a person with a disability  
5 within the meaning of WLAD § 49.60.040(7).

6           59. At all times relevant to this action, Defendant held Council Meetings in places of  
7 public accommodation within the meaning of WLAD § 49.60.040(2).

8           60. The WLAD § 49.60.030 guarantees that disabled persons shall enjoy "[t]he right to  
9 the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place  
10 of public resort, accommodation, assemblage, or amusement . . . .";

11           61. Plaintiff is an aggrieved person within the meaning of WLAD;

12           62. Defendant discriminated against Plaintiff on the basis of her disability in violation  
13 of the NJLAD, as set forth above.  
14

15           63. As set forth above, absent injunctive relief there is a clear risk that Defendant's  
16 actions will recur with Plaintiff and/or additional Deaf persons.  
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18           64. Plaintiff is therefore entitled to seek and recover compensatory damages for the  
19 injuries and loss she sustained as a result of Defendant's discriminatory conduct as hereinbefore  
20 alleged pursuant to WLAD § 49.60.030(2).

21           65. Plaintiff is further entitled to an award of attorney's fees, costs, and disbursements  
22 pursuant to WLAD § 49.60.030(2).  
23

24                           **PRAYER FOR RELIEF**

25           66. WHEREFORE, Plaintiff respectfully prays that this Court grant the following  
26 relief:

1 a. Enter a declaratory judgment, pursuant to Rule 57 of the Federal Rules of Civil  
2 Procedure, stating that all Defendant has subjected Plaintiff to unlawful discrimination in  
3 violation of Title II of the Americans with Disabilities Act and Section 504 of the  
4 Rehabilitation Act, and that Defendant subjected Plaintiff to unlawful discrimination in  
5 violation of the Washington Law Against Discrimination;

6 b. Enjoin Defendant from implementing or enforcing any policy, procedure, and/or  
7 practice that denies deaf or hard of hearing individuals meaningful access to and full and  
8 equal enjoyment of Defendant's facilities, services or programs;

9 c. Order Defendant:

10  
11 i. to develop, implement, promulgate, comply, and further develop a policy  
12 prohibiting future discrimination against Plaintiff or other deaf or hard of  
13 hearing individuals by failing to provide effective communication;

14 ii. to develop, implement, promulgate, and comply with a policy to ensure that  
15 Defendant will consider the communication needs of deaf individuals who  
16 seek Defendant's services and will affirmatively work with deaf individuals  
17 to provide effective auxiliary aids and services to make its services  
18 accessible;

19  
20 iii. to train all its employees, staff, and other agents on a regular basis about the  
21 rights of individuals who are deaf or hard of hearing under the ADA, the  
22 Rehabilitation Act, and the WLAD;

23  
24 iv. to appoint and designate an official with the City Hall's administration  
25 exclusively tasked to handle requests for accommodations and to oversee  
26 implementation of the policies and training in full compliance under the

ADA, the Rehabilitation Act, and the WLAD;

v. be subject to auditing by the state auditor's office or related agency that oversees the implementations of ADA accommodation.

vi. To provide Plaintiff notice and opportunity to be heard on all prior meeting agendas for which an interpreter nor closed captioning was not provided and to stay execution of any decided items where Plaintiff was not provided an equal opportunity for notice and opportunity to be heard;

d. Award to Plaintiff:

i. Compensatory damages pursuant to the ADA and the Rehabilitation Act, and pursuant to the WLAD;

ii. Punitive damages given the willful, continuous wrongs,

iii. Reasonable costs and attorneys' fees pursuant to the ADA, the Rehabilitation Act, and the WLAD;

iv. Interest on all amounts at the highest rates and from the earliest dates allowed by law;

Any and all other relief that this Court finds necessary and appropriate.

Dated this 12<sup>th</sup> day of February, 2021.

LAW OFFICE OF CARL J. MARQUARDT PLLC

/s/ Carl J. Marquardt

Carl J. Marquardt (WA Bar No. 23257)

1126 34<sup>th</sup> Avenue, Suite 311

Seattle, WA 98122

Tel: (206) 388-4498

Email: [carl@cjmlawoffice.com](mailto:carl@cjmlawoffice.com)

1 EISENBERG & BAUM, LLP  
2 Andrew Rozynski (*pro hac vice pending*)  
3 NY# 5054465  
4 24 Union Square East, Fourth Floor  
5 New York, NY 10003  
6 Phone: (212) 353-8700  
7 Fax: (212) 353-1708  
8 [arozynski@eandblaw.com](mailto:arozynski@eandblaw.com)

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*Attorneys for Plaintiff*